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1	ATKINSON, ANDELSON, LOYA, RUUD & ROMO A Professional Corporation				
2	Thomas A. Lenz State Bar No. 152624 Kristen N. Silverman State Bar No. 279842				
3	12800 Center Court Drive South, Suite 300				
4	Cerritos, California 90703 Telephone: (562) 653-3200				
5	Facsimile: (562) 653-3333				
6	Attorneys for Respondent-Employer TEMECULA MECHANICAL, INC.				
7					
8	UNITED STATES OF AMERICA				
9	BEFORE THE NATIONAL LABOR RELATIONS BOARD				
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11	TEMECULA MECHANICAL, INC.,	Case No.	21-CA-39667		
			21-CA-39834		
12	Respondent-Employer,		ING BRIEF O		
13	and	RESPON	DENT-EMPLO		

PLUMBERS AND PIPEFITTERS LOCAL

JOURNEYMEN AND APPRENTICES OF

INDUSTRY OF THE UNITED STATES AND

THE PLUMBING AND PIPE FITTING

CANADA, AFL-CIO,

ANSWERING BRIEF OF MECULA MECHANICAL, INC. TO CROSS-EXCEPTIONS OF COUNSEL FOR THE GENERAL COUNSEL

[Board Rules and Regulations Section 102.46(a),(b)

Charging Party-Union.

Respondent-Employer Temecula Mechanical, Inc. ("TMI" or "Employer") respectfully objects to Counsel for the General Counsel's arguments seeking to expand findings against TMI in the above-captioned case. The Judge made credibility resolutions which, in large part, favored the General Counsel. TMI disagrees with those findings as noted in exceptions filed separately. TMI believes that the weight of the evidence supports the arguments it has made throughout this litigation, that TMI engaged in lawful activity, that TMI was unaware of protected activity until after employee Norman Guardado was laid off and therefore no relief should be granted for unfair labor practices which General Counsel claims occurred in late 2010. The General Counsel's arguments are supported neither by the record nor Board law and the cross-exceptions should be rejected in their entirety.

Counsel for the General Counsel filed cross-exceptions on the basis: (1) the Judge failed to include a provision on alleged failure to recall Norman Guardado ("Guardado") to work; (2) the Judge failed to find an unlawful layoff of Guardado; (3) the Judge's found insufficient evidence of Union activity in November-December 2010; and (4) the Judge found the Employer had no knowledge of Guardado's protected activity before his December 2010 layoff. TMI addresses these cross-exceptions briefly in turn.

1. The evidence does not support an argument for failure to recall.

The Employer confirmed willingness to employ Guardado if a suitable position is available and he is qualified for it. Guardado has problems with employment eligibility and his work qualifications are established to be less than other employees of the Employer. Tr. 266:19-267:7, 267:15-18, 313:16-314:4, 314:16-315:3. These are significant impediments particular to Guardado, which limited the amount and type of work the Employer could offer Guardado. Tr. 267:15-18, 314:16-315:3. Moreover, the Employer laid off numerous employees with greater qualifications contemporaneous with Guardado's layoff, did not fill Guardado's position after his layoff, has not hired any new employees and since has not recalled for any positions which Guardado could have performed. Tr. 250:2-17, 251:25-252:6, 311:17-312:3. No finding of an alleged failure to recall, or an Order on same, is appropriate.

2. The record does not support a finding of unlawful layoff.

Guardado and Pat Leonard had an argument over Guardado's late arrival to work after Guardado had been drinking the night before. Their conversation did not touch on protected activity but rather focused on lack of work. Tr. 93:4-22, 318:8-319:10, 320:23-322:5. There is no evidence of protected activity linked to Guardado's layoff, there is no evidence that TMI specifically knew of protected activity by Guardado at that time, or that TMI took action because of such purported knowledge. Nor is there an expression of animus. There is no prima facie case of discriminatory action. The timing is consistent with the Employer's layoffs of many other employees as work wound down and work opportunities dramatically declined. Tr. 248:15-249:21, 311:17-312:3, 329:8-18. The Judge ruled correctly that the layoff was lawful.

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The record shows any alleged union activity in late 2010 was kept secret by Guardado.

The record is unclear as to when Union activity began, who was involved, or whether Guardado was involved before January 2011. Even assuming, that doesn't mean the Employer knew about it. The record shows that any alleged union activity was kept secret on Guardado's part. Tr. 268:13-15. The Judge ruled correctly that there was no known Union activity in late 2010.

4. The Employer had no knowledge of protected activity.

The Judge found a number of conversations occurred in the period in and after late 2010. That does not mean that the conversations identify Guardado specifically as involved in protected activity. The Employer confirmed that conversations with labor compliance were normal and routine, thereby negating any nexus between such correspondence and the implication of protected activity. Tr. 237:22-239:2, 304:20-22, 308:6-11. The Judge correctly ruled on this point, that the Employer had no knowledge of protected activity by Guardado before his December 2010 layoff.

Conclusion

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The Employer's position is supported by the record. Consistent with the Employer's position here and on Exceptions separately filed in this matter, the General Counsel's Cross-Exceptions should be denied.

Dated: July 12, 2012

Respectfully Submitted,

ATKINSON, ANDELSON, LOYA, RUUD &

ROMO

By:

Thomas A. Len

Attorneys for Respondent-Employer

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PROOF OF SERVICE

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 12800 Center Court Drive South, Suite 300, Cerritos, California 90703.

On July 12, 2012, I served the following document(s) described as ANSWERING BRIEF RESPONDENT-EMPLOYER TEMECULA MECHANICAL, INC. TO CROSS-EXCEPTIONS OF COUNSEL FOR THE GENERAL COUNSEL on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

NLRB – Executive Secretary	E-filing	Via NLRB site
Lisa McNeill NLRB, Region 21 888 S. Figueroa Street, 9th Floor Los Angeles, CA 90017-5449	Via facsimile	Tel: 213/894-5204 Fax: 213/894-2778
Plumbers and Pipefitters Local 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO 4959 Palo Verde Street Montclair, CA 91763	Via e-mail	Tel: 909-625-2493 Fax: 909-625-2493 ualocal398@verizon.net CHARGING PARTY

- Via e-mail Client/Employer Temecula Mechanical
 - \square **BY MAIL:** I deposited such envelope in the mail at Cerritos, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
 - \square BY FAX: I sent such document by use of facsimile machine telephone number (562) 653-3333. The facsimile machine I used complied with California Rules of Court Rule 2.301(3) and no error was reported by the machine.
 - \square BY EMAIL: I sent such document by use of email to the email address(es) above. (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email confirmation is attached hereto indicating the recipients' email address and time of receipt pursuant to CCP § 1013(a).

Executed on July 12, 2012, at Cerritos, California.

Janice Y asuda